

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2082**

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**Introduced by Assembly Member Campos**

February 17, 2016

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An act to add Section 23059 to the Business and Professions Code, relating to alcoholic beverages.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2082, as amended, Campos. Alcoholic beverages: licenses: emergency orders.

Existing law, the Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. The act authorizes the department to investigate potential violations of the act, authorizes the Director of the Department of Alcoholic Beverage Control to bring an action to enjoin a violation or the threatened violation of the act, and provides for a hearing process held on a protest, accusation, or petition for a license.

This bill would authorize the ~~director~~ *director, by emergency order*, to temporarily suspend, limit, ~~condition, or take other action upon~~, or ~~condition~~ any license ~~by emergency order~~ prior to any hearing when, in the opinion of the department, the action is urgent and necessary to protect against an immediate threat to health or ~~safety~~. *safety that is reasonably related to the operation of the licensed business*. The bill would, among other things related to the issuance and application of

an emergency order, authorize ~~or licensee or person or entity~~ a licensee against whom the order has been issued to petition for relief by written argument.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23059 is added to the Business and  
2 Professions Code, to read:

3 23059. (a) *(1) The director ~~may~~ may, by emergency order,*  
4 *temporarily suspend, limit, ~~condition, or take other action upon,~~*  
5 *or condition* any license issued pursuant to this division by  
6 emergency order prior to any hearing when, in the opinion of the  
7 department, the action is urgent and necessary to protect against  
8 an immediate threat to health or ~~safety~~. *safety that is reasonably*  
9 *related to the operation of the licensed business.*

10 *(2) If an immediate threat to health or safety is alleged, direct*  
11 *evidence of the threat must be presented to the director prior to*  
12 *the issuance of an emergency order pursuant to this section. The*  
13 *standard in any subsequent evidentiary hearing shall be whether*  
14 *the licensee knew, or should have known, about the threat.*

15 *(b) For purposes of this section:*

16 *(1) "Direct evidence" includes, but is not limited to, police*  
17 *reports, citations from the relevant local civil authority,*  
18 *photographs, and video footage provided by law enforcement or*  
19 *another public official acting in his or her official capacity.*

20 *(2) "Immediate threat to health or safety" means the trafficking*  
21 *or dealing of controlled substances, prostitution, human trafficking,*  
22 *gambling, or violence involving great bodily injury or death that*  
23 *occurs on or immediately adjacent to the licensee's premises.*

24 ~~(b) (1) The emergency order may suspend, limit, condition, or~~  
25 ~~take other action in relation to the license of one or more persons~~  
26 ~~in an operation without affecting other individual licensees.~~

27 ~~(2)~~

28 *(c) (1) The emergency order shall set forth the grounds upon*  
29 *which it is based, including a statement of facts constituting the*  
30 *alleged emergency necessitating the action.*

31 ~~(3)~~

(2) The emergency order shall be effective immediately upon issuance and service upon the licensee or any agent of the licensee. The department shall serve the licensee with the emergency order, a copy of available discovery, and other relevant evidence in possession of the department, including, but not limited to, affidavits, declarations, and any other *direct* evidence upon which the department relied in issuing the emergency order. The department shall notify the licensee of the licensee's right to petition for relief.

~~(e)~~

(d) (1) Once the emergency order has been served, a licensee ~~or person or entity against whom the emergency order has been issued~~ may petition for relief from the order by written argument.

(2) If a petition for relief is filed, using a preponderance of the evidence standard, the director shall modify or vacate the emergency order if either:

(A) There is a reasonable probability that the licensee will prevail in the accusation.

(B) The likelihood of immediate threat to the health or safety in not sustaining the emergency order does not outweigh the likelihood of injury to the licensee in sustaining the emergency order.

~~(d)~~

(e) The department shall respond, in writing, to a petition for relief, either by sustaining, modifying, or vacating the emergency order, within three business days of receipt of the petition. If the department does not sustain or modify the emergency order within three business days of receipt of the petition, the emergency order shall be dissolved.

~~(e)~~

(f) The emergency order shall remain effective until further order of the department or disposition at an accusation proceeding.

~~(f) (1)~~

(g) The department shall file an accusation against the licensee with any additional, available pertinent discovery that was not provided to the licensee at the time the emergency order was issued within five business days after the issuance of an emergency order. *The emergency order shall be dissolved if the department does not file an accusation within five business days after the issuance of the order.*

1     ~~(g)~~

2     ~~(h)~~ The licensee or person or entity against whom the emergency  
3     ~~order has been issued and served~~ is entitled to a hearing. If a  
4     hearing is requested, it shall commence within 10 business days  
5     ~~of the received date of~~ *after the department's receipt of* the Notice  
6     of Defense.

7     ~~(h)~~

8     (i) Nothing in this section precludes a licensee from proceeding  
9     directly to a full evidentiary hearing on an accusation without first  
10    petitioning the department for relief.

11    ~~(i)~~

12    (j) At the accusation hearing, the administrative law judge shall  
13    issue a verbal decision which sustains or vacates the emergency  
14    ~~order. A proposed decision by an administrative judge on the~~  
15    ~~accusation shall be prepared for the director's review within 10~~  
16    ~~business days after the submission of the hearing.~~ *order or shall*  
17    *issue a written order sustaining or vacating the emergency order*  
18    *within 24 hours of the close of the hearing. The administrative law*  
19    *judge shall submit a written proposed decision within 10 days*  
20    *after the close of the hearing.*